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HOUSE BILL 1060

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO MOTOR TRANSPORTATION; AMENDING THE DEFINITION OF
"INCIDENTAL CARRIER" TO INCLUDE A VEHICLE THAT HOLDS SIXTEEN
PASSENGERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-2A-3 NMSA 1978 (being Laws 2003,
Chapter 359, Section 3, as amended) is amended to read:

"65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

A. "amendment" means a permanent change in the type
of service or territory authorized by an existing certificate
or permit;

B. "antitrust laws" means the laws of this state
relating to combinations in restraint of trade;

C. "base state" means the registration state for an
interstate motor carrier that either is subject to regulation

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1 or is transporting commodities exempt from regulation by the
2 federal motor carrier safety administration pursuant to the
3 single state registration system;

4 D. "cancellation" means the voluntary, permanent
5 termination of all or part of an operating authority;

6 E. "certificate" means the operating authority
7 issued by the commission to intrastate common motor carriers of
8 persons or household goods;

9 F. "change in a certificate or permit" means the
10 amendment, cancellation, change in tariff, change in form of
11 ownership, lease, reinstatement, transfer or voluntary
12 suspension of a certificate or permit;

13 G. "change of name" means a change in the legal
14 name of the owner of an operating authority or in the does-
15 business-as name of the motor carrier, but does not include a
16 change in the form of ownership;

17 H. "commission" means the public regulation
18 commission;

19 I. "common control" means control of more than one
20 operating authority of the same kind for the same or
21 overlapping territory;

22 J. "common motor carrier" means a person offering
23 compensated transportation by motor vehicle to the general
24 public, whether over regular or irregular routes, or under
25 scheduled or unscheduled service, but does not include commuter

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1 services;

2 K. "common tariff" means a tariff applying to two
3 or more common motor carriers;

4 L. "commuter service" means a person who provides
5 seven- to fifteen-passenger motor vehicles to a volunteer-
6 driver commuter group that shares rides to and from the
7 workplace or training site, where participation is open to the
8 public and incidental to the primary work or training-related
9 purposes of the commuter group, and where the volunteer drivers
10 have no employer-employee relationship with the commuter
11 service;

12 M. "contract motor carrier" means a person offering
13 compensated transportation by motor vehicle under individual
14 agreements with particular customers or shippers;

15 N. "control" means the power to direct or cause the
16 direction of the management and policies of a motor carrier
17 deriving from:

18 (1) ownership of a sole proprietorship, if the
19 operating authority is held by an individual as a sole
20 proprietor;

21 (2) ownership of ten percent or more of the
22 voting stock of the corporation, if the operating authority is
23 held by a corporation;

24 (3) a partnership interest in a general
25 partnership, if the operating authority is held by a general

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1 partnership;

2 (4) an interest in a limited partnership of
3 ten percent or more of the total value of contributions made to
4 the limited partnership, or entitlement to ten percent or more
5 of the profits earned or other compensation paid by the limited
6 partnership, if the operating authority is held by a limited
7 partnership;

8 (5) a membership interest of ten percent or
9 more in a limited liability company, if the operating authority
10 is held by a limited liability company; or

11 (6) capacity as a trustee, personal
12 representative or other person with a fiduciary duty to a motor
13 carrier;

14 O. "electronic filing" means submission of a
15 document by facsimile, electronic mail or other electronic
16 transmission;

17 P. "financial responsibility" means the ability to
18 respond in damages for liability arising out of the ownership,
19 maintenance or use of a motor vehicle in the provision of
20 transportation services;

21 Q. "highway" means a way or place generally open to
22 the use of the public as a matter of right for the purpose of
23 vehicular travel, even though it may be temporarily closed or
24 restricted for the purpose of construction, maintenance, repair
25 or reconstruction;

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1 R. "household goods" means personal effects and
2 property used or to be used in a dwelling when a part of the
3 equipment or supply of the dwelling and other similar property
4 as the federal motor carrier safety administration may provide
5 by regulation, but shall not include property moving from a
6 factory or store, other than property the householder has
7 purchased to use in ~~[his]~~ the householder's dwelling that is
8 transported at the request of, and the transportation charges
9 are paid to the carrier by, the householder;

10 S. "incidental carrier" means a motor carrier of
11 persons that ~~[provides services]~~ transports passengers using
12 vehicles designed to transport sixteen or more passengers,
13 including the driver, and for which the customer pays either
14 directly or indirectly ~~[and that transports passengers in~~
15 ~~conjunction with the primary service that it provides];~~

16 T. "interested person" means a motor carrier
17 operating over the routes or in the territory involved in an
18 application or grant of temporary authority, a person affected
19 by a rule proposed for adoption by the commission or a person
20 the commission may deem interested in a particular matter;

21 U. "interstate motor carrier" means a person
22 providing compensated transportation in interstate commerce,
23 whether or not the person is subject to regulation by the
24 federal motor carrier safety administration;

25 V. "intrastate motor carrier" means a person

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1 providing compensated transportation by motor vehicle between
2 points and places in the state;

3 W. "involuntary suspension" means the temporary
4 cessation of use of all or part of an operating authority
5 ordered by the commission for cause for a stated period of time
6 or pending compliance with certain conditions;

7 X. "irregular route" means that the route to be
8 used by a motor carrier is not restricted to a specific highway
9 within the territory the motor carrier is authorized to serve;

10 Y. "lease of a certificate or permit" means an
11 agreement by which the owner of a certificate or permit grants
12 to another the exclusive right to use all or part of the
13 certificate or permit for a specified period of time in
14 exchange for consideration;

15 Z. "lease of equipment" means an agreement whereby
16 a motor carrier obtains equipment owned by another for use by
17 the motor carrier in the exercise of its operating authority;

18 AA. "motor carrier" means a person offering
19 compensated transportation of persons or property by motor
20 vehicle, whether in intrastate or interstate commerce;

21 BB. "motor carrier organization" means an
22 organization approved by the commission to discuss and propose
23 a common tariff for a group of motor carriers or to represent
24 motor carriers that have adopted the common tariff;

25 CC. "motor carrier of persons" means a person who

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1 provides compensated transportation of persons on a highway in
2 the state;

3 DD. "motor vehicle" means a vehicle, machine,
4 tractor, trailer or semitrailer propelled or drawn by
5 mechanical power and used on a highway in the transportation of
6 property or persons, but does not include a vehicle, locomotive
7 or car operated exclusively on rails;

8 EE. "nonconsensual tow" means the compensated
9 transportation of a motor vehicle by a towing service, if such
10 transportation is performed at the request of a law enforcement
11 officer or without the prior consent or authorization of the
12 owner or operator of the motor vehicle;

13 FF. "operating authority" means a certificate,
14 permit, warrant, single trip ticket, single state registration
15 receipt or temporary authority issued by the commission to a
16 motor carrier;

17 GG. "permit" means the operating authority issued
18 by the commission to intrastate contract motor carriers of
19 persons or household goods;

20 HH. "process" means an order, subpoena or notice
21 issued by the commission or an order, subpoena, notice, writ or
22 summons issued by a court;

23 II. "property" means movable articles of value,
24 including cadavers, hazardous matter, farm products, livestock
25 feed, stock salt, manure, wire, posts, dairy products,

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1 livestock hauled in lots of twenty-five thousand pounds or
2 more, farm or ranch machinery and the items transported by a
3 towing service, but does not include household goods or
4 unprocessed farm products transported by a farmer from the
5 place of harvesting to market, storage or a processing plant;

6 JJ. "protest" means a document filed with the
7 commission by an interested person that expresses an objection
8 to a matter before the commission;

9 KK. "rate" means a form of compensation charged,
10 whether directly or indirectly, by a person for a
11 transportation service subject to the jurisdiction of the
12 commission;

13 LL. "record" means an account, correspondence,
14 memorandum, tape, disc, paper, book or transcribed information
15 regarding the operation of a motor carrier;

16 MM. "registration year" means a calendar year;

17 NN. "regular route" means a route used by a motor
18 carrier within the territory in which the motor carrier is
19 authorized to serve that is fixed by its operating authority;

20 OO. "revocation" means the involuntary, permanent
21 termination of all or part of an operating authority ordered by
22 the commission for cause;

23 PP. "shipper" means a person who consigns or
24 receives goods for transportation;

25 QQ. "single state registration receipt" means the

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1 document issued annually to a motor carrier operating in
2 interstate commerce evidencing that proof of financial
3 responsibility and safety has been filed with the base state
4 and that the annual per vehicle fees have been paid for that
5 registration year;

6 RR. "tariff" means a document filed by a motor
7 carrier of persons or household goods or a towing service
8 performing nonconsensual tows that has been approved by the
9 commission and sets forth the transportation services offered
10 by the motor carrier to the general public, including the
11 rates, terms and conditions and applicable time schedules
12 relating to those services, including a common tariff;

13 SS. "taxicab service" means a common motor carrier
14 engaged in unscheduled passenger transportation in a motor
15 vehicle having a capacity of not more than eight passengers,
16 including the driver, not operated on a regular route or
17 between specified places, and that:

18 (1) is licensed as a taxicab service by a
19 state or local jurisdiction; or

20 (2) if not licensed or regulated by a state or
21 local jurisdiction as a taxicab service, is offered by a person
22 that:

23 (a) provides local transportation for a
24 fare determined, except with respect to transportation to or
25 from airport, train or bus terminals, primarily on the basis of

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1 the distance traveled; and

2 (b) does not primarily provide
3 transportation to or from one or more airport, train or bus
4 terminals;

5 TT. "terminal shuttle service" means a common motor
6 carrier engaged in passenger transportation service that:

7 (1) is prearranged by contract or operated by
8 hire on a regular route, allowing for deviation to pick up or
9 drop off passengers, between specified or generally specified
10 points; and

11 (2) primarily provides transportation to or
12 from one or more airport, train or bus terminals but may also
13 provide for intermediate pickup or departure of passengers;

14 UU. "towing services" means the use of specialized
15 equipment, including repossession services using towing
16 equipment, to transport:

17 (1) a damaged, disabled or abandoned motor
18 vehicle and its cargo;

19 (2) a motor vehicle to replace a damaged,
20 disabled or abandoned motor vehicle;

21 (3) parts and equipment to repair a damaged,
22 disabled or abandoned motor vehicle;

23 (4) a motor vehicle whose driver has been
24 declared unable to drive by a law enforcement officer;

25 (5) a motor vehicle whose driver has been

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1 removed from the scene or is unable to drive; or

2 (6) a motor vehicle repossessed or seized
3 pursuant to lawful authority;

4 VV. "transfer of a certificate or permit" means a
5 permanent conveyance of all or part of a certificate or permit;

6 WW. "transfer by operation of law" means that the
7 ownership of or interest in a certificate or permit passes to
8 another by application of established rules of law;

9 XX. "voluntary suspension" means the commission-
10 authorized cessation of use of all or part of a certificate or
11 permit at the request of the motor carrier for a specified
12 period of time;

13 YY. "warrant" means the operating authority issued
14 by the commission to charter services, towing services,
15 commuter services and motor carriers of property; and

16 ZZ. "weight-bumping" means the knowing and willful
17 statement of a fraudulent weight on a shipment of household
18 goods."